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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3591-14T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

GERALD C. VAUGHN,

Defendant-Appellant.

Submitted November 1, 2016 – Decided May 3, 2017

Before Judges Reisner and Sumners.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Indictment No.
94-02-0117.

Joseph E. Krakora, Public Defender, attorney
for appellant (Steven M. Gilson, Designated
Counsel, on the brief).

Gurbir S. Grewal, Acting Bergen County
Prosecutor, attorney for respondent (Catherine
A. Foddai, Special Deputy Attorney General/
Acting Senior Assistant Prosecutor, on the
brief; John J. Scaliti, Legal Assistant, on
the brief).

PER CURIAM

Defendant Gerald Vaughn appeals from an October 20, 2014 order denying his second petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

On October 6, 1994, a jury found defendant guilty of first-degree murder, N.J.S.A. 2C:11-3(a)(1); first-degree felony murder, during the commission of a robbery, N.J.S.A. 2C:11-3(a)(3); first-degree robbery, N.J.S.A. 2C:15-1; third-degree possession of a weapon, a tree branch, for an unlawful purpose, N.J.S.A. 2C:39-4(d). Defendant was sentenced on January 13, 1995, to an aggregate life term with thirty years of parole ineligibility. We affirmed his conviction and sentence on direct appeal. State v. Gerald C. Vaughan,¹ A-4752-94 (App. Div. October 8, 1996), certif. denied, 148 N.J. 459 (1997).

In November 1998, defendant filed a PCR petition alleging that the trial court's jury instructions failed to explain the law of accomplice liability, trial counsel was ineffective for not pursuing an intoxication defense, and his sentence was excessive because it was disparate from his separately tried two co-defendants who were sentenced to thirty years with thirty years of parole ineligibility. On March 30, 2000, the trial court denied the petition without an evidentiary hearing. We affirmed that

¹ Defendant's last name was incorrectly spelled.

order. State v. Gerald C. Vaughn, A-5794-99 (February 7, 2002), certif. denied, 175 N.J. 76 (2002).

In April 2013, defendant filed a pro se motion contending that his sentence was illegal because it was disparate when compared with similarly situated defendants, and requested discovery regarding such defendants. He also sought assignment of counsel. The trial court subsequently assigned counsel and ordered defendant to file a second PCR petition on the condition the petition allege facts showing that there was excusable neglect in not filing within the five-year limitations period "and that there is a reasonable probability that if the defendant's factual assertions were found to be true [,] enforcement of the time bar would result in a fundamental injustice. R. 3:22-12."²

Following argument on October 20, 2014, the PCR judge entered an order and issued an oral decision denying PCR without an evidentiary hearing. The judge stated, "[t]he Appellate Division has already determined that [defendant's sentence] is not an excessive sentence. It is clearly [] not an illegal sentence in the context of the statute." In denying defendant's request for discovery to support his contention that he received a disparate sentence as compared to other similarly situated defendants, the

² The order is not dated, and the record does not disclose the date it was entered.

judge explained, "[h]e seeks to go behind the judgment of conviction to have at the very minimum the [presentence investigation report (PSI)], which also through counsel says that some things could be redacted. I don't know what could or could not be. But PSIs themselves are not discoverable. They are confidential." Additionally, the judge pointed out that discovery would in any case be unnecessary because

on its face contrary to the defendant's allegations he does not make a finding of any type, prima facie, or any type of basis for this [c]ourt to order discovery. That as long as he was sentenced within the statutory scheme the sentence is not excessive or illegal, that there is no basis in law. There is no basis in this petition, notwithstanding his citing several people who he alleges make the disparity. . . There is no basis for any allegation of a violation of either the Eight Amendment or the [Fourteenth] Amendment, Equal Protection, or due process, or any constitutional level that he was sentenced . . . that the proper sentence in the case was made in accordance with the factors that were before [the sentencing judge], the aggravating and mitigating factors, the nature of the offense. [The judge] obviously had a flavor of the case. He was not only the sentencing judge, but he presided over the trial, presided over the first PCR.

This appeal ensued.

On appeal, defendant raises the single argument that:

THE DENIAL OF DEFENDANT'S PCR PETITION MUST BE REVERSED AND THIS MATTER BE REMANDED FOR DISCOVERY REGARDING DEFENDANT'S CLAIM OF UNCONSTITUTIONAL SENTENCING DISPARITY

We have considered this contention in light of the record and applicable legal principles and conclude it is without sufficient merit to warrant a discussion in a written opinion. R. 2:11-3(e)(2). We affirm substantially for the reasons expressed by the PCR judge in his well-reasoned oral opinion. We add the following comments.

A court may correct an illegal sentence "at any time before it is completed." State v. Schubert, 212 N.J. 295, 309 (2012). However, in accordance with Rule 3:22-5, "[a] prior adjudication upon the merits of any ground for relief is conclusive whether made in the proceedings resulting in the conviction or in any post-conviction proceeding brought pursuant to this rule or prior to the adoption thereof, or in any appeal taken from such proceedings." Post-conviction relief proceedings are not an opportunity to re-litigate claims already decided on the merits in prior proceedings. State v. McQuaid, 147 N.J. 464, 483 (1997); R. 3:22-5. If an issue has been determined on the merits in a prior appeal, it cannot be re-litigated in a later appeal of the same case, even if the matter is of constitutional dimension. McQuaid, supra, 147 N.J. at 483-84; State v. White, 260 N.J. Super. 531, 538 (App. Div. 1992), certif. denied, 133 N.J. 436 (1993).

On defendant's direct appeal, Vaughan, supra, A-4752-94, (slip op at 4-5), and his first PCR petition, Vaughn, supra, A-5794-99 (slip op at 2-3), we concluded defendant's sentence was neither excessive nor disparate from his co-defendants. And as noted, the Supreme Court denied certification for both decisions. Defendant now argues that his sentence is disparate from other similarly situated defendants. Since this argument could have been raised before, defendant's challenge to his sentence is procedurally barred by Rule 3:22-5. In turn, defendant's request to obtain discovery pertaining to other defendants convicted of the same offenses to substantiate his argument is without merit.

We also conclude that defendant's PCR petition is time barred in accordance with Rule 3:22-12. Defendant has not established that there was excusable neglect for the filing of second PCR petition over eighteen years after his conviction.³

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


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³ We note that the record does not reflect whether defendant filed an amended petition to address the timeliness issue as ordered by the court.